

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 19/2003

1. Special Land Acquisition Officer
(North Goa), Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O. Navelim,
Salcete, Goa 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfond, near Margao Railway Station,
Margao-Goa.

..... Appellants.

V/s.

Dr. Edgar Silveira
r/o. Defence Colony,
Porvorim, Goa.

..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. A.F. Diniz, Advocate for the respondent.

CORAM : A.P. LAVANDE, J.

DATE : 11TH MARCH, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge the Award dated 6.9.2002, passed by the Second Addl. District Judge, Panaji in Land Acquisition Case No.211/1996. By Notification dated 23.9.91, an area of 1,58,781 sq. metres was acquired for the Konkan Railway

Corporation Ltd. An area of 3575 sq. metres of Survey No.168/2 of Village Malar, Tiswadi Taluka, belonging to the respondent was also acquired by the said Notification. On 7.3.1994, the Land Acquisition Officer declared the Award and fixed the market value of the acquired land at the rate of Rs.16/- per sq. metre. Dis-satisfied with the Award, the respondent sought reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as 'the Act'), claiming compensation at the rate of Rs.200/- per sq. metre. In the reference Court, the respondent examined himself as AW.1 and one Loyala Menezes as AW.2 and produced some documents. The respondent relied upon two sale deeds and also produced notice issued by the Land Acquisition Officer under Section 12 in respect of another acquisition by the Government for construction of a road. The appellants relied on Sale Deed dated 16.12.1980 of land bearing Survey No.4/4 of Village Malar, by which one Janardhan Thali had purchased land admeasuring over 10000 sq. metres at the rate of Rs.3.83 per sq. metre. The appellants herein examined Vinay V. Naik (RW.1), and Manguesh S. Deshpande, (RW.2).

2. The reference Court relied upon Sale Deed dated 5.11.1985 and held that there was no evidence regarding the trend of increase in prices of land every year by 10 % on an island like Malar and awarded compensation at the rate of Rs.100/- per sq. metre.

3. Mr. Afonso, learned Counsel appearing for the appellants has submitted that the acquired land cannot be compared with the land which was the subject-matter of the sale deed dated 5.11.1985, and, therefore, the reference Court was not justified in relying upon the said sale deed for fixing the compensation in respect of the acquired land. He further submitted that the acquired land is at a distance of over 2 kms. from the land which is subject-matter of the said sale deed. He further submitted that it has come in evidence that in an unacquired portion of the land, there are mundkarial houses and, therefore, the reference Court was not justified in fixing the compensation at the rate of Rs.100/- per sq. metre.

4. Mr. Diniz, learned Counsel appearing for the respondent has submitted that no fault could be found with the findings given by the reference Court in fixing the market value at the rate of Rs.100/- per sq. metre. According to Mr. Diniz, the reference Court was fully justified in placing reliance on the sale deed dated 5.11.1985, since the acquired land is comparable to the land in the said sale deed inasmuch as both the lands are of the same nature i.e. orchard/garden land. The learned Counsel further submitted that the evidence on record clearly establishes that the acquired land is situated within a radius of 1 Km. from the acquired land. According to the learned Counsel, since the acquired land

and the land in the sale deed are of similar nature and situated in the same village, the reference Court was fully justified in placing reliance on the said sale deed to fix the market rate of the acquired land. In so far as the notice received from the Land Acquisition Officer, produced by the respondent is concerned, the learned Counsel submitted that the said notice at the most suggests that Rs.43/- per sq. metres was the rate offered by the Land Acquisition Officer in the said acquisition and the same cannot be taken as conclusive, since the same only amounts to an offer and not the compensation which is accepted by the party, as the party is entitled to seek reference if dis-satisfied with the award passed by the Land Acquisition Officer. The learned Counsel further submitted that the Division Bench of this Court, by Judgment dated 28th September, 2003 in First Appeal No.20/2003 (Special Land Acquisition Officer and anr. vs. Mariano Caetano Clarimundo F.J. De Piedade Meneze) has awarded Rs.81/- per sq. metre in respect of the land bearing Survey No.194 which was situated in the same Village and was acquired by the same notification. According to the learned Counsel, since the land acquired which was the subject-matter in First Appeal No.20/2003 and the acquired land in the present case are similar in nature and are acquired under the same Notification, the respondent is also entitled to the compensation at the rate of Rs.100/- per sq. metre. In any event, the learned Counsel submitted that the respondent is entitled to minimum compensation of Rs.81/- per sq. metre in the event this Court holds that

the land which was subject-matter in First Appeal No.20/2003 is similar in nature.

5. I have considered the rival submissions made by the learned Counsel. I have gone through the records and the evidence led by the parties. It may not be necessary for me to reproduce, in detail, the evidence led by the parties. The respondent has relied upon Sale Deed dated 5.11.1985. Relying upon the said sale deed, this Court in the Judgment dated 28th September, 2004 in First Appeal No.20/2003 has fixed the compensation at the rate of Rs.81/- per sq. metre. From the evidence brought on record by the parties, it is established that the acquired land is situated at a distance of about 1 km. from the land in the Sale Deed dated 5.11.1985. It is also established that the distance between land in the said sale deed and the land which was subject matter of First Appeal No.20/03 is almost same. Moreover, as stated above, the land involved in the First Appeal No.20/03 and the acquired land in the present case are similar in nature and have been acquired by the same Notification. That being the position, I am of the opinion that the reliance could safely be placed on the said sale deed dated 5.11.1985 for fixing the market rate in respect of the acquired land. Since the compensation in respect of the land bearing Survey No.194 (part) has been fixed by the Division Bench of this Court at the rate of Rs.81/- per sq. metre, which is also similar to the land in the present

case, there is no reason for me to give different rate in respect of the acquired land. In so far as the submission of the learned Counsel for the appellants that on account of mundcarial houses in the unacquired portion of land of the respondent, the compensation payable to the respondent has to be reduced, I am unable to accept the same in the absence of any cogent evidence being led by the appellants as to the extent of unacquired land and the location and number of mundcarial houses therein.

6. At this stage, Mr. Afonso, learned Counsel appearing for the appellants pointed out that the respondent has been awarded Rs.24,130/- towards the value of the fruit bearing trees, which were existing in the acquired land, and Rs.3,894/- towards timber value and the balance towards the fruit. This position has not been disputed by the learned Counsel appearing for the respondent. Mr. Afonso submitted that the amount of Rs.24,130/- has to be adjusted towards the compensation payable to the respondent since the respondent is not entitled to fruit value in addition to timber value as has been held by the Apex Court in catena of decisions. This position is also not disputed by the learned Counsel for the respondent. That being the position, while fixing the total compensation payable to the respondent, the amount of Rs.24,130/- awarded towards the fruit bearing trees existing in the acquired land, has to be adjusted.

7. In view of the above, the appeal is partly allowed and the compensation in respect of the acquired land as on the date of Section 4 Notification is fixed at Rs.81/- per sq. metre. Needless to mention that the respondent is also entitled to all the statutory benefits under the Act. The parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.